

REMARKS

This Amendment responds to the Final Office Action mailed September 24, 2009 in the above-identified application. A Request for Continued Examination (RCE) accompanies this Amendment. Accordingly, entry of the Amendment and allowance of the application are respectfully requested.

Claims 23 and 27-36 are currently under consideration. Claims 1-22 and 24-26 have been withdrawn from consideration. By this Amendment, claim 23 has been amended. The amendment finds clear support in the original application at least in FIG. 1; page 1, last paragraph; page 2, third paragraph; and claim 1. No new matter has been added.

The Examiner's courtesy in conducting a telephone interview with Applicant's attorney on January 21, 2010 is acknowledged with appreciation. During the telephone interview, a proposed amendment to claim 23 was discussed. Applicant's attorney explained the claimed invention and distinctions over the cited Fernandez patent. The Examiner acknowledged that the proposed amendment would overcome FIGs. 4A-4D and 5 of Fernandez. However, the Examiner expressed concern that proposed amended claim 23 may not distinguish over FIG. 2 of Fernandez. Applicant's attorney briefly explained differences between the claimed invention and FIG. 2 of Fernandez. The substance of the telephone interview is reflected in the following comments.

The Examiner has rejected claims 23 and 27-36 under 35 U.S.C. §103(a) as unpatentable over Fernandez (U.S. 5,865,358) in view of Gold (U.S. 3,086,365). The rejection is respectfully traversed for the following reasons.

Amended claim 23 is directed to a workpiece cracking device, the workpiece being any one of a disk-shaped and a plate-shaped production part having an upper side and an under side and a prespecified fracture plane. The workpiece cracking device comprises a base, a first pair of jaws immovably mounted on the base, a second pair of jaws movably mounted on the base, a drive moving, in operation, the movably-mounted second pair of jaws periodically up and down with respect to said upper side and said under side of the disk-shaped or plate-shaped production part, as defined in an unstressed state, in such a way that the production part, along the fracture plane, is subjected to a tensile stress alternately on said upper side and said under side, and a control unit

with which the frequency and force of the up and down movement of the second pair of jaws can be adjusted.

By contrast, Fernandez discloses a breaker machine designed to separate a bundle of sheets, such as paperboard, in two, arcuate and progressively severing motions in the plane of the workpiece. With reference to FIGs. 4B, 4C and 5 of Fernandez, members 40A and 44A are moved in the arcuate motion shown by arrow B in FIG. 4B about fixed pivot point X. Then, members 40A and 44A are moved in the arcuate, progressively severing motion shown by arrow C in FIG. 4C about pivot point Y (col. 5, lines 6-26). Thus, Fernandez discloses two movements in the plane of product portions 30A and 30B.

Accordingly, Fernandez does not disclose or suggest a drive moving, in operation, the movably mounted second pair of jaws *periodically up and down with respect to said upper side and said under side of the disk-shaped or plate-shaped production part, as defined in unstressed state, in such a way that the production part, along the fracture plane, is subjected to a tensile stress alternately on said upper side and said under side*, as required by amended claim 23. The Examiner acknowledged during the telephone interview that amended claim 23 is patentably distinguished over FIGs. 4A-4D and 5 of Fernandez.

FIG. 2 of Fernandez shows a method of breaking adjacent product portions of stacked articulated sheets wherein clamps 22A and 22B are deflected downwardly to perform a break between adjacent stacks of product portions (col. 2, lines 33-43). However, Fig. 2 of Fernandez does not disclose or suggest moving the movably-mounted second pair of jaws *periodically up and down with respect to said upper side and said under side of the disk-shaped or plate-shaped production part, as defined in an unstressed state, in such a way that the production part, along the fracture plane, is subjected to a tensile stress alternately on said upper side and said under side*, as required by amended claim 23.

Furthermore, Fernandez teaches that the method shown in FIG. 2 is disadvantageous since “the top portions must be separated by a wider dimension such that more power is required” (col. 2, lines 40-43). Accordingly, Fernandez teaches away from the arrangement of FIG. 2 and urges the reader to implement horizontal movement as described in connection with FIGs. 4A-4D and 5.

In addition, it may be noted that the periodic movement recited in Applicant's claims causes alternating stresses on the upper side and the under side of the workpiece. This is quite different from a breaking movement as described at col. 2, lines 38-40 of Fernandez, which states "Clamps 22A-B are then deflected downwardly as shown in order to perform the break between adjacent stacks of product portions". Thus, Fernandez does not disclose periodic movement or the effect caused by periodic movement.

Gold is cited for disclosing a hydraulic actuation system but contains no teaching of a workpiece cracking device. Accordingly, Gold does not contain the teachings that are lacking in Fernandez.

For at least these reasons amended claim 23 is clearly and patentably distinguished over Fernandez in view of Gold. Claims 27-36 depend from claim 23 and are patentable over Fernandez in view of Gold for at least the same reasons as claims 23.

Based upon the above discussion, claims 23 and 27-36 are in condition for allowance.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. H0075.70107US00 from which the undersigned is authorized to draw.

Dated: January 25, 2010

Respectfully submitted,

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